

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:AOK:OKL:TL-N-7409-99
GLBloom

date: JAN 19 2000

to: Chief, Examination Division, Arkansas-Oklahoma District

from: District Counsel, Arkansas-Oklahoma District, Oklahoma City

subject: **Advisory Opinion**

Taxpayers: (1) [REDACTED]

TIN: [REDACTED]

TYE: [REDACTED]

(2) [REDACTED]

TIN: Not stated

TYE: [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

ISSUES

1. Who is authorized to sign the Form 872 on behalf of the [REDACTED] consolidated group?

2. What is the proper name, caption, or language to use in the "name" field on the front of Form 872 for the taxable year [REDACTED]?

3. What is the proper name, caption, or language to use in the "corporate name" field on the back of Form 872 for the taxable year [REDACTED]?

4. Who is authorized to sign the Form 872-P on behalf of the tax matters partner for [REDACTED]?

FACTS

During all of [REDACTED], [REDACTED] was the common parent of a consolidated group which filed a consolidated federal income tax return for the taxable year ended [REDACTED]. [REDACTED] was a wholly-owned subsidiary of [REDACTED], a Netherlands company, during that same period. On [REDACTED], [REDACTED] contributed [REDACTED] per cent of the stock of [REDACTED] to [REDACTED]. You have concluded that the latter transaction qualifies as a reverse acquisition pursuant to Treas. Reg. § 1.1502-75(d)(3), with the result that [REDACTED] became the new common parent for the consolidated group for the tax year ended [REDACTED]. You are presently in the process of securing a consent (Form 872) to extend the statute of limitations with respect to the consolidated return filed for the taxable year [REDACTED].

In addition to the proposed Form 872, you have included for our review, a proposed Form 872-P with respect to the TEFRA partnership return of [REDACTED] for the taxable year ended [REDACTED].

Form 872

Issue 1: Party authorized to execute Form 872 for [REDACTED]

Treas. Reg. § 1.1502-77(a) provides that the common parent of a consolidated group which files a consolidated income tax return for a particular year, shall be the sole agent of each subsidiary in the group with respect to all matters which may arise in connection with the group's consolidated income tax liabilities for that particular year. This authority includes the execution of consents to extend the statute of limitations. The common parent will remain the agent for the group for the years during which it was the common parent so long as that common parent continues to exist, and even if a member leaves the group, the common parent leaves the group, or the group terminates.

Generally, when the common parent ceases to exist, the consolidated group ceases to exist. Treas. Reg. § 1.1502-75(d). Although Treas. Reg. § 1.1502-77(d) provides special designation options for dissolving or terminating common parents, that particular section does not address transactions in which the group continues to exist but the common parent of the group does not remain the common parent, as was the case with [REDACTED], who, effective [REDACTED] remained in the group but was no longer the common parent.

Treas. Reg. § 1.1502-75(d) provides three exceptions to its general rule effecting cessation of the group where the common parent terminates its status of common parent but remains in the group, i.e., (1) the section 368(a)(1)(F) reorganization rule, (2) the downstream transfer rule, and (3) the rule applicable in this case, the reverse acquisition rule.

In Union Oil of California v. Commissioner, 101 T.C. 130 (1993), the Tax Court held that in a reverse acquisition where the old common parent becomes a subsidiary of the new common parent, both the former common parent and the new common parent are agents for the affiliated group for purposes of the mailing of notices of deficiency and the execution of consents for years prior to the reverse acquisition. In accordance with that case and the above-referenced regulations, we believe that both [REDACTED] and [REDACTED] are proper agents for the group with regard to the execution of a consent for the taxable year ended [REDACTED]. While a consent can be secured from either agent, it is not recommended that separate consents be secured from each. Rather, we suggest that you prepare a single consent form for [REDACTED] and have both corporations sign it.

Issue 2: Proper "name" field on front of Form 872

The "name" field should be captioned as follows:

On the front of the Form 872, on the line designated taxpayer, type the name of the consolidated group exactly as it appears on the consolidated return for the year for which the consent is being signed, e.g., [REDACTED] (EIN) and Subsidiaries Consolidated Group.

Issue 3: Proper "corporate name" field on back of Form 872

Because we believe it advisable to secure signatures from both [REDACTED] and [REDACTED] on the Form 872 for [REDACTED], the "corporate name" fields should be captioned as follows:

On the second page of the Form 872, just under the signature line, type the name of the individual authorized to execute the Form 872, his title, and the name of the corporation for which he is signing (the corporation of which he is a current officer), i.e.,

(Name of Officer)
(Title)

(EIN)

(Name of Officer)
(Title)

(EIN)

Form 872-P

Issue 4: Party authorized to execute Form 872-P for _____

We believe you have correctly determined that _____
_____, the tax matters partner of _____
_____ for the taxable year ended
_____ is the proper party to execute the Form 872-P.
We also concur with your determination that _____
should be a party to the 872-P. In line with the above
discussion concerning our recommendation that you include the
group's old common parent, _____, on the Form 872, we
suggest you likewise include _____ in the execution
of the Form 872-P on behalf of the tax matters partner.

We suggest the name fields be captioned as follows:

Parent Corporation

Sign Here

(Name of Officer)
(Title)

(EIN), on
behalf of _____
_____, Tax Matters
Partner of _____

(Name of Officer)
(Title)

(EIN), on
behalf of _____
_____, Tax Matters
Partner of _____

Tax Matters Partner

Sign Here

(Name of Officer)
(Title)

(EIN)

Because we are submitting this advisory opinion to the National Office for post review, please withhold any action in reliance hereon until we receive National Office approval of this advice. If you have any questions concerning this matter, please contact Attorney Gary Bloom at (405) 297-4815.



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cc: Assistant Regional Counsel (TL)
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